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10 *Attorneys for the United States.*

11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13 In the Matter of the Estate of )  
14 MELVIN LOWERY, ) Case No.: 2:16-cv-02644-JAD-PAL  
15 Decedent. )  
16 ) **STIPULATION TO DISMISS**  
17 ) **AND ORDER CLOSING CASE**  
18 )  
19 \_\_\_\_\_

20 Petitioner Melvin Lowery (“Petitioner”) and real-party defendant in interest Julian  
21 Castro, in his official capacity as Secretary of the U.S. Department of Urban and Housing  
22 Development (“HUD”), through their undersigned counsel, and pursuant to Fed. R. Civ. P.  
23 41(a)(1)(A)(ii), stipulate as follows:

24 1. HUD is the holder of both the First Deed of Trust and Second Deed of Trust on  
25 for 4555 East Sahara Avenue #103, Las Vegas, Nevada 89101 (“Lowery  
26 Property”), as identified in paragraphs 1-4 of the Notice of Removal (ECF No. 1),  
27 filed in this matter on November 16, 2016.

28 2. HUD holds the Deeds of Trust on the Lowery Property pursuant to HUD’s Home  
Equity Conversion Mortgage for Seniors (“HECM”) program, which is a national  
loan insurance program under the National Housing Act, 12 U.S.C. § 1715z-20.  
The Notice of Default and Foreclosure Sale for the Lowery Property, attached as  
Exhibit B to the Notice of Removal, was appropriate.

3. Congress has vested HUD with exclusive authority to dispose of real property like  
the Lowery Property, i.e., property secured by mortgage interests held by HUD

1 under the HECM program. The foreclosure process is pursuant to Federal statute  
 2 (National Housing Act, 12 U.S.C. § 1715z-20, and the Single Family Mortgage  
 3 Foreclosure Act of 1994, 12 U.S.C. §§ 3751-3768) and Federal regulation (24  
 4 C.F.R. Parts 206 and 207). Additionally, as set forth in *Washington & Sandhill*  
 5 *Homeowners Ass'n v. Bank of Am., N.A.*, No. 2:13-cv-01845-GMN-GWF, 2014  
 6 WL 4798565 \*5 (D. Nev Sept. 25, 2014), only “Congress has the Power to  
 7 dispose of and make all needful Rules and Regulations respecting the Territory or  
 8 other Property belonging to the United States,” *see* U.S. Const. Art. IV, §3, cl. 2.,  
 9 and title to United States’ property can only be divested by an Act of Congress.  
 10 *Id.* (*citing Beaver v. United States*, 350 F.2d 4, 8 (9th Cir. 1965)). Moreover,  
 11 “[s]tate legislation must yield under the supremacy clause of the Constitution to  
 12 the interest of the federal government when the legislation as applied interferes  
 13 with the federal purpose or operates to impede or condition the implementation of  
 14 federal policies and programs.” *Rust v. Johnson*, 597 F.2d 174, 179 (9th Cir.  
 15 1979). There is “[n]o basis in law for treating mortgage interests of federal  
 16 instrumentalities differently from other property of the United States.” *Id.* at 177.

- 17 4. Because Congress has vested HUD with exclusive authority to dispose of real  
 18 property like the Lowery Property, i.e. property secured by mortgage interests  
 19 owned by HUD under the HECM program, and enabled HUD to transfer title and  
 20 possession of its properties without “judicial proceedings” pursuant to 12 U.S.C. §  
 21 3763(a), the foreclosure sale of the Lowery Property, currently scheduled for  
 22 December 9, 2016, shall go forward.
- 23 5. Any and all requests by Petitioner to stay the foreclosure sale, whether filed  
 24 before or after removal, are withdrawn by Petitioner and any order entered by the  
 25 state court purporting to enjoin, delay, or otherwise affect the scheduled non-  
 26 judicial foreclosure sale of the Lowery Property is vacated pursuant to Fed. R.  
 27 Civ. P. 60(b) because the state court lacks jurisdiction to enjoin the non-judicial  
 28 foreclosure sale of the Lowery Property.

1           6. Upon entry of this stipulation, the action shall be dismissed and the matter closed.  
2           Dated the 5th day of December 2016.  
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CLEAR COUNSEL LAW GROUP

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*/s/ Christopher M. Wood*  
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*/s/ Mark E. Woolf*  
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IT IS SO ORDERED. The Clerk of Court is directed to CLOSE THIS CASE.

  
JENNIFER A. DORSEY  
UNITED STATES DISTRICT JUDGE  
DATED: 12/6/16